

**TOWN OF ROCKY HILL
ZONING BOARD OF APPEALS
MEETING OF OCTOBER 21, 2014**

1. CALL TO ORDER

Chairman Reilly called the Tuesday, October 21, 2014 meeting to order at 7:07 p.m. in the Town Council Room of the Rocky Hill Town Hall, 761 Old Main Street, Rocky Hill, Connecticut.

Present: James Reilly, Chairman
Joe Coelho, Vice Chairman
Phil Benoit, Secretary

Alternates: William Tangney
Jason Bates

Also: Frank Kelley, Zoning Enforcement Officer
Kimberley A. Ricci, Dir. Planning & Building/Asst. ZEO
Eileen A. Knapp, Recording Secretary

Chairman Reilly went over the procedures for the public hearings and noted that any decision of the Board can be appealed within 15 days of the decision. Secretary Benoit read the legal notice.

2. PUBLIC HEARING

A. Appeal 2014-13, Gaetano Rocamora and Joanne Rocamora appealing, under Section 8.7.3.B.2 of the Rocky Hill Zoning Regulations, a decision of Assistant Zoning Enforcement Officer, Kimberley A. Ricci from correspondence dated July 29, 2014, in which the property at 155 Dividend Road, Tax ID # 14-359, was described as a two family home; Applicant is appealing that the property cannot be rebuilt as three(3) apartments which existed prior to the fire on site on April 11, 2014. Property is located in a BP-Business Park Zoning District;

Attorney Dan Silver, of Silver and Silver in New Britain addressed the Commission representing the applicant. They are here because they disagree with the decision of Mrs. Kim Ricci, Assistant Zoning Enforcement Officer that the property, which burned down, could rebuilt only as a 2 unit structure instead of the 3 unit structure it was. He distributed several handouts to the Commission as exhibits.

Mr. Kelley said the proof of mailings have been submitted.

The first exhibit is a copy of the deed for the property from the land records of 155 Dividend Road. There was a fire on April 14, 2014, which destroyed the entire property. Mr. Rocamora wanted to rebuild the 3 units that were there prior to the fire, which included the main house, an apartment on the second floor and an apartment over the garage. When Mr. Rocamora purchased the property, there were three units on the property. The previous owner held the property for 15-20 years and indicated that the property always had 3 separate units. Attorney Silver said it is their contention that the use of the property for 3 units a non-conforming use and should be allowed to continue. Mrs. Ricci ruled that it was only approved for two units because the assessor's card showed that it was only 2 units.

Atty. Silver said according to the history of the site, there were always three units and for some reason the assessor's card was changed to 2 units. The property was built in about 1943 and converted into 3 separate apartments and there is nothing in the Town records indicating anything to the contrary. The assessment card from 1943 there was an inspection verification on May 31, 1969 with a comment stating, "multi-family +3", which he believes indicates that the property had 3 separate units. There is a notation that no inspection was made, but they really don't know who wrote that or what it means. There is another assessment card dated July 28, 1960 that says second floor apartment was added and that there were three bathrooms, which seems to indicate three separate units. Unfortunately the person that made these notations is unavailable but it all points to the fact that there were always 3 units on this property. The final assessment card indicates that there were 3 units. It looks like sometime after these assessment cards were filled out, the last assessment was changed making the property a 2 unit site, but there is no evidence from the Town as to why this was done. The site historically has had 3 units but Kim's ruling was based solely on the latest assessment card.

Atty. Silver said he believes they have presented enough evidence showing that the site always had three units and there was never any action taken against the property owner regarding the number of units.

Commissioner Faulkner said the assessor's card dated 1943 has a notation from 1969 that says, "occupancy family residence 2x" and he wondered what that indicated. Atty. Silver said they really don't know, but there are many indications pointing to the fact that this property had 3 units.

Mrs. Ricci said the exhibits are property street cards and they are the older version of the assessment cards and this is all that was in the Building Department files.

Commissioner Comments/Questions

Vice Chairman Coelho asked if there are any other 3-family houses in the area. Atty. Silver said he does not know. He said he believes the majority of the evidence leans toward this property being used for 3 units, rather than 2.

Commissioner Bates asked if each apartment had its own utilities. Atty. Silver said yes, each had its own utilities and their own gas meters. He said what he presented to the Commission is all that was in the files.

Commissioner Benoit asked if this property ever had any building violations. Atty. Silver said he found no violations on the record. Commissioner Benoit asked if the owner was paying taxes on 2 or 3 apartments. **Mr. Guy Rocamora of 86 Fox Hill Drive** said he doesn't know because the tax bill is for one lump sum. There were two means of egress for each unit along with individual furnaces for each unit. He said he did pull building permits for different things and the Building Department did inspect the site and there were no issues with the fact that there were 3 units on the property.

Chairman Reilly asked Mrs. Ricci if her decision was based solely on the most recent assessment card. Mrs. Ricci said according to the latest assessment card, the property was sold in 2002 and in 2008 the property was measured and there was one site visit and the card shows the property as having 2 units. The other assessor's cards came from the Building Department and one notes that there are "2 rentable apartments over the garage". One of the cards says that a second floor apartment was added to the house. Mrs. Ricci noted that the Building Inspector issues permits and if there was no permit issues, then there is no legal use. Atty. Silver said this is a very confusing issue because there are even inconsistencies on the same card and the files are incomplete. Mr. Rocamora noted that the gas company will not install a meter until they see an approved inspection ticket from the Town; so there had to be a permit even though it's not in the records. Atty. Silver's argument is that his client shouldn't be adversely affected because the Town's records are incomplete.

Mr. Al Chiulli 499 Pleasant Valley Road addressed the Commission to say he is in favor of approving this appeal. He feels whatever Mr. Rocamora does to the property will be an improvement to the neighborhood.

B. Appeal 2014-14, Laura Chiulli, proposing to construct a 8' by 13' 6" deck over an existing 12' by 8' patio within the property setback for property located at 9 Brimfield Way in a R-20, Residential Zoning District, ID# 17-285-09;

Mrs. Laura Chiulli of 499 Pleasant Valley Road addressed the Commission as the owner of Unit 9 on Brimfield Way. They are requesting a deck be added to the unit consistent with other decks in the development. This is an elderly complex and her parents have been living there since June. Unfortunately there is a non-conforming step down to their patio. Because of the grade, you need more than one step, but less than two steps, which makes the step very steep and dangerous. They would like to cover the patio with a deck that would allow her parents a direct step to the outside. She and her husband spoke with the Property Manager and they were given approval on September 3, 2014. She just found out tonight that another letter was submitted today stating that the Brimfield Board is denying the request for a deck until further information is received about the style, size, materials and drainage issues. Mrs. Chiulli said they are not before this Commission for anything other than the setback variance and asked that this Appeal

still be voted on by the Commission. They have already paid for the sign, the application fee and for all the notices to the abutters to be sent out and she hopes this Appeal is not delayed because of this letter that was submitted at the last minute. Mrs. Chiulli said she understands that the Brimfield Board has every right to request further information from her but it should not affect the decision on the variance for the setback.

Mr. Al Chiulli said the patio is going to remain and the deck will be built over it so there will be no grade change. He said any deck they build will be built with the approval of the Board.

Commissioner Comments/Questions

Commissioner Tangney asked if the deck would be mounted directly on the slab. Mr. Chiulli said no, there will be about 1' in between the patio and the deck.

Commissioner Benoit asked if there would be any step to get off the deck. Mr. Chiulli said they would be building church steps or handicapped steps so you can get down in an emergency.

Mrs. Virginia Brown of 12 Brimfield Way addressed the Commission. She is the Treasurer of the Brimfield Board and she said there are concerns about this deck because of water issues and the style of materials being used. Mr. Chiulli said they talked to the Property Manager about painting the materials so they would match what has been used for other decks.

3. NEW BUSINESS

A. Appeal 2014-13, Gaetano Rocamora and Joanne Rocamora, 155 Dividend Road, ID # 14-359;

Chairman Reilly said in this case the Town's records are inadequate and he feels the homeowner may be correct in this instance. There have never been any violations on this property even when it was inspected.

A MOTION was made by Commissioner Benoit to approve Appeal 2014-13, Gaetano Rocamora and Joanne Rocamora appealing, under Section 8.7.3.B.2 of the Rocky Hill Zoning Regulations, a decision of Assistant Zoning Enforcement Officer, Kimberley A. Ricci from correspondence dated July 29, 2014, in which the property at 155 Dividend Road, Tax ID # 14-359, was described as a two family home; Applicant is appealing that the property cannot be rebuilt as three(3) apartments which existed prior to the fire on site on April 11, 2014. Property is located in a BP-Business Park Zoning District; due to lack of evidence on the Town's part. Seconded by Greg Faulkner. Commissioner Faulkner said he feels the Applicant presented sufficient evidence that there were 3 units on the property and the Town lacked any concrete evidence to indicate otherwise. All were in favor, MOTION CARRIED UNANIMOUSLY. (Commissioner Bates voted in the absence of another regular member.)

B. Appeal 2014-14, Laura Chiulli, 9 Brimfield Way, ID# 17-285-09;

Commissioner Benoit said this Commission has no jurisdiction over the issues brought up in the letter from the Brimfield Board. They are only here to decide on the setback variance.

A MOTION was made by Commissioner Benoit to approve Appeal 2014-14, Laura Chiulli, proposing to construct a 8' by 13' 6" deck over an existing 12' by 8' patio within the property setback for property located at 9 Brimfield Way in a R-20, Residential Zoning District, ID# 17-285-09. Seconded by Commissioner Faulkner. All were in favor, MOTION CARRIED UNANIMOUSLY. (Commissioner Tangney voted in the absence of another member.)

4. OLD BUSINESS

5. ANY OTHER BUSINESS

Mrs. Ricci noted that the Plan of Conservation and Development is currently being updated at meetings being held on the 4th Tuesday of the month. All Commissioners are invited to attend.

6. APPROVE WORKING NOTES / MINUTES – September 16, 2014

A MOTION was made by Vice Chairman Coelho to approve the minutes and working notes of September 16, 2014 as presented. Seconded by Commissioner Benoit. 4 were in favor (Reilly, Coelho, Benoit, Tangney), 1 abstention (Faulkner), MOTION CARRIED.

7. ADJOURN

A MOTION was made by Commissioner Benoit to adjourn. Seconded by Commissioner Faulkner. All were in favor, MOTION CARRIED UNANIMOUSLY.

Meeting adjourned at 8:15 p.m.

Respectfully submitted,

Eileen A. Knapp
Recording Secretary